

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PATRICIA SCHWEND, <i>n/k/a</i>)	
PATRICIA SCHWEND-McCUMMISKEY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:10-cv-01590-CDP
)	
US BANK, N.A., et al.,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO STAY DISCOVERY, FOR PROTECTIVE ORDER, & TO
CONTINUE MEDIATION REFERRAL PENDING THE COURT'S RULING ON THEIR
PENDING MOTION FOR SUMMARY JUDGMENT**

Defendants US Bank, N.A. and Wells Fargo, Bank, N.A. ("Defendants"), by and through their counsel, Bryan Cave LLP, hereby move to stay discovery, for a protective order and to continue the mediation referral pending the Court's ruling on Motion for Summary Judgment. In support of their motion, Defendants submit an accompanying memorandum and state as follows:

Defendants have moved for summary judgment on all claims. That motion is based on three fundamental points: (1) US Bank was the proper party to foreclose on Plaintiff's property, as the holder of the underlying note, based on established UCC principles; (2) Plaintiff lacks standing to challenge the foreclosure based on the securitization of her note; and (3) neither Missouri common law, the Home Affordable Modification Program ("HAMP") nor any other federal loan modification programs deprive US Bank of its rights to foreclose and, in any event, Plaintiff's loan modification allegations are barred by the Missouri statute of frauds. (*See generally* Docs. #99 and #101).

Rather than address the merits of summary judgment, Plaintiff asserted merely that the motion was premature and that additional — and unserved — discovery was required. Plaintiff

then propounded the First Class Requests for Production Directed to US Bank, N.A. and Wells Fargo Bank, N.A, Interrogatories Directed to Both US Bank, N.A. and Wells Fargo Bank, N.A., Request for Admissions Directed to Both US Bank, N.A. and Wells Fargo Bank, N.A., and Missouri Rule 57.03(B) Notices of Video Depositions of Corporate Representatives Directed to Both US Bank, N.A. and Wells Fargo Bank, N.A (the “Corporate Depositions”) (collectively the “Discovery”).

Plaintiff’s latest wave of discovery is a belated and transparent effort to impose broad, burdensome and wholly unnecessary discovery in an attempt stave off summary judgment. Because none of the proposed discovery bears on the relevant issues before the Court on summary judgment, the Court should exercise its authority to control the timing and scope of discovery under Rule 26 Fed. R. Civ. P.

Defendants respectfully request that that this court defer the Discovery until the Court has had an opportunity to address the merits of the pending summary judgment motion. Otherwise, the parties risk incurring substantial costs for discovery that is not related to the legal arguments in the summary judgment motion. Defendants proposed to Plaintiff that the parties jointly defer discovery until the Court has ruled on the summary judgment motion. The present motion is required by Plaintiff’s rejection of that proposal.

WHEREFORE, Defendants US Bank, N.A. and Wells Fargo, Bank, N.A. respectfully request that the Court enter an order staying discovery, issuing a protective order against the Discovery and continuing the mediation referral until the Court’s ruling on Defendants’ Motion for Summary Judgment and any other relief deemed appropriate.

Dated: March 28, 2012.

Respectfully submitted,

BRYAN CAVE, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2012, the foregoing was filed electronically with the Clerk of Court to be served to the following by operation of the Court's electronic filing system:

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